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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1905.

## No. 153

ELEANORA D. SPEER, ETC., APPELLANT,

*vs.*

MICHAEL J. COLBERT, TRUSTEE, ETC.

## BRIEF ON BEHALF OF THE APPELLEE, MICHAEL J. COLBERT.

GEORGE E. HAMILTON,
M. J. COLBERT,
*For Appellee.*

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**Brief on Behalf of the Appellee, Michael J. Colbert.**

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## I.

## STATEMENT OF CASE.

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This is an appeal to this Court from a decree of the Court of Appeals of the District of Columbia, passed on the 12th day of October, 1904, reversing a decree of the Supreme Court of the District of Columbia passed on the 21st day of May, 1903, construing the will of Ethelbert

Carroll Morgan, deceased. Ethelbert Carroll Morgan died on the 5th day of May, 1891, leaving a will, which is filed with an exhibit with the bill, and which appears on page 14 of the record. The will was dated April 22, 1891, less than one calendar month before the death of the testator. After various small legacies and bequests, the testator directed that all the rest and residue of his individual estate should go to his trustees, with directions to pay the income to his two sisters, Eleanora Speer and Minnie Mosher, during their lives, and if the said two sisters should both die, leaving no issue living at their deaths, then his trustees should convey all such residue and remainder in his individual estate to "Georgetown University, in the District of Columbia, to be an endowment in equal shares of literary and medical departments thereof." The will further provided that the trustees should hold all the testator's estate which came to him under his father's will, and to pay therefrom the sum of $10,000 to "Georgetown University, in the District of Columbia, to be used and held as an endowment for the prosecution of research in the colonial history of Maryland and the territory now embraced in the District of Columbia, and obtaining and preserving archives and papers having relation thereto and known as the James Ethelbert Morgan fund."

The testator further directed that a sum "not to exceed $5,000" should be applied and expended under the personal supervision of his trustees in the purchase and erection of a chime of bells, and either a side altar or a memorial window, or a bell and either a side altar or a

memorial window, for some one Catholic church, said church to be designated by his mother by her last will or otherwise, and if she should fail to do so, then the trustees should carry out the trust and donate the same to some Catholic church, giving preference, if there should be one, to a church built by the Jesuits. In this same clause of his will the testator further directed that if this gift should be void, he directed that said sum not exceeding $5,000 should be equally divided between St. Vincent's Orphan Asylum and St. Joseph's Orphan Asylum in the City of Washington.

The testator further directed that a sufficient sum, not to exceed $3,000, should be invested and the income applied to maintain a scholarship in the study of medicine, preferably in Georgetown University, otherwise in some medical college in the District of Columbia, to be known as the E. Carroll Morgan Scholarship.

The testator further directed that the sum of $5,000 should be used to form a fund to be known as the E. Carroll Morgan fund or scholarship, to be applied as he might thereafter verbally indicate to his trustees, or if he failed to do so, as his trustees, with the advice of proper persons, might decide, to the maintenance of a scientific department, or the foundation and the application of the income to a scholarship in the classical department of the University of Georgetown, in the District of Columbia; that the qualifications under both or either of the last two clauses of his will should be that the applicant should be born in the District of Columbia, and at the time or within a year a student in a

Catholic school or a public school of the District of Columbia, and most excellent in a competitive examination conducted by the faculty of the University of Georgetown.

Mrs. Speer, a sister of the testator, filed her bill in the Supreme Court of the District of Columbia on the 5th day of March, 1901, attacking the validity of the bequests to Georgetown College on the ground of misnomer, on the ground that the corporation known as the President and Directors of Georgetown College is a religious sect, order or denomination within the meaning of the Maryland Bill of Rights (see page 8 of the Record) and, therefore, all the legacies to that institution were void because one calendar month did not intervene between the date of the will and the date of the testator's death. The bill of complaint makes numerous other attacks upon the validity of the will, but we assume that the appellant in this Court relies only upon the claims made in the brief, and these are briefly stated as follows:

First: That Georgetown College is a religious sect, order or denomination.

Second: That the corporate title of Georgetown University is "The President and Directors of Georgetown College" and the institution is named in the will as Georgetown University, or the University of Georgetown.

Third: That the bequests to the asylums are void because the asylums are a religious sect, order or denomination.

Fourth: That Georgetown College had not chartered power for the prosecution and research of colonial history in the State of Maryland or elsewhere, and for various other reasons mentioned on page 20 of the appellant's brief.

Fifth: That the bequests in the will for the establishment of scholarships are void for uncertainty and because the amount in one instance, at least, is of a sum "not exceeding $3,000."

## II.

## ARGUMENT.

There is practically no dispute between the parties to this litigation about the facts, nearly all of which are admitted by the answer and the only dispute will be about the legal conclusion to be drawn from the admitted facts. The Supreme Court of the District of Columbia held in substance that the devise and bequest to the trustees of the testator's estate, exclusive of that which came to him from his father, was valid and effectual, and that if the two sisters of the testator should both die leaving no issue at their deaths, then all the testator's estate, except the specific bequests, and excluding that which came to him from his father's estate, should pass to the President and Directors of Georgetown College in the District of Columbia, to be an endowment in equal shares of the literary and medical schools connected with the University of Georgetown, and that the corporation known as the President and Directors of Georgetown College were entitled to receive the same. The Court

further held in its decree that the clauses and sub-clauses of the will, designated in the bill of complaint as clauses C, D, E, F, G and H, were each and all of them void and invalid and of no effect, and that all said void and lapsed legacies fell into the residuum of the testator's estate and passed to the beneficiaries under the terms of the residuary clause of said will, designated in the bill as clause one. The case was taken to the Court of Appeals and the judgment of that Court was that all the legacies and bequests contained in the will were good, except the bequest of a sum not to exceed $5,000 to be expended under the personal supervision of the trustees in the purchase and erection of a chime of bells, the erection of an altar or memorial window, &c., for some one Catholic church in the District of Columbia, but that the alternate bequests of said sum of $5,000 was good. The Court also held that the bequest of $5,000 to form a fund to be known as the E. Carroll Morgan fund or scholarship for the maintenance of a scientific department or the foundation and application of the income to a scholarship in the classical department of Georgetown University, was void for the reason that the bequest or direction was uncertain and incomplete and impossible of execution. We will take up the discussion of these various objections in their order.

The two opinions to be found in the record, being the one delivered by Mr. Justice Hagner of the Supreme Court of the District of Columbia, and beginning on page 87 of the record, and the opinion of Chief Justice Alvey, of the Court of Appeals of the District of Colum-

bia, beginning on page 126 of the record, are so elaborate and review the authorities so fully that it is hardly necessary to repeat the citations in this brief, and we, therefore, content ourselves with the discussion of the questions presented to this Court for review upon general principles.

(1)

*Is the corporation, the President and Directors of Georgetown College, popularly known as Georgetown University or the University of Georgetown, a religious sect, order or denomination*

We respectfully submit to the Court that were it not for the fact that this proposition is seriously contended for by distinguished counsel, it might be very properly characterized as startling. Georgetown College was incorporated by an act of Congress, approved June 10, 1844, and found in Sixth Statutes at Large at page 912. That act provided as follows:

> "Section 1. That there be erected in Georgetown in the District of Columbia a college for the instruction of youth in the liberal arts and sciences, the name, style and title of which shall be the President and Directors of Georgetown College.
>
> "Section 2. That James Ryder, Thomas Lilly, Samuel Barber, James Curley and Anthony Ray be, and they are hereby declared to be, a body politic and corporate, with perpetual succession in deed or in law to all intents and purposes whatsoever, by the name, style and title of 'The President and Directors of Georgetown College,' by which name and title they and their successors shall be competent at law and in equity to take to themselves and their

successors for the use of said College any estate whatever in any messuages, etc., goods, chattels and other effects, etc., by gift, bequest, devise, etc., and the same to grant, etc., for the use of said College in such manner, etc., and to receive the same, their rents, etc. and to apply the same for the proper use and benefit of the said College; and by the same name to sue and be sued, implead and to be impleaded in any court of law or equity in all manner of suits, actions and proceedings whatever, and generally by and in the same name to do and transact all and every of the business touching or concerning the premises, etc.

"Section 3. That the said corporation shall adopt a common seal under and by which all deeds, diplomas and acts of the said College or corporation shall pass and be authenticated, and the same seal at their pleasure to break and alter or devise a new one.

"Section 4. That no misnomer of the said corporation shall defeat or annul any donation, gift, grant, devise or bequest to or from said corporation.

"Section 5. That said corporation shall not employ its funds, or income or any part thereof, in banking operations, or for any purpose or object other than those expressed in the first section of this act, and nothing in said act shall be construed to prevent Congress from altering, amending or repealing the same."

Prior to this act of incorporation, on the 1st day of March, 1815, Congress passed an act entitled "An Act concerning the College of Georgetown in the District of Columbia." That act, as stated by Mr. Chief Justice Al-

vey in his opinion, did not profess to be an act of incorporation, but it did confer authority upon the president and directors of the College of Georgetown to confer degrees and faculties in arts, sciences and liberal professions, to which persons are usually admitted in other colleges or institutions of the United States, and to issue diplomas or certificates to testify the admission to such degree. Subsequently to the Act of June 10, 1844, Congress has on at least one occasion by legislative declaration recognized the existence of Georgetown College, and prior to 1844 authorized the grant to that institution of large amounts of property which have been sold off by the college from time to time, and there are now in the District of Columbia thousands of land titles dependent upon the lawful incorporation of that institution and the lawful grant to it of large amounts of valuable property in the City of Washington, District of Columbia. The Court is referred to the following acts of Congress in support of this statement;

See Statutes-at-Large, Vol. 11, page 265;
Statutes-at-Large, Vol. 6, page 538.

The only testimony offered by the complainant in support of the allegations of her bill that Georgetown College is a religious institution as distinguished from an educational institution is the testimony of the President of the University, and of certain documentary evidence in the way of catalogues, etc., introduced by the complainant, and certain books of instruction used in the school. Father Daugherty, the president, testified

in substance that the business of Georgetown College was to teach young men just as they are taught in any other college. In his testimony on behalf of the defendants, beginning at page 70 of the record, it is made to appear that the University of Georgetown is composed of the college or the undergraduate school, of the medical department, subdivided into two branches, namely, the dental and the medical branches, and the law department; that there is no school of theology connected with Georgetown University; that in addition to the undergraduate school they have a preparatory school, and a post-graduate course; that no distinction is made in the reception of students between Catholics and non-Catholics. That perhaps one-half, and certainly one-third of the students in the law and medical schools are non-Catholic. He further states that it is specially provided and set down that there shall be no exclusion from any branch of the University on account of religious belief. He further stated that the only religious instruction given in the school is that there is a a catechetical lesson in religion, and one lecture a week lasting from thirty to thirty-five minutes, on the subject of Christian doctrine, based upon the tenets of the Catholic religion. Whatever may be the extent and nature of the religious instruction given by the authorities of Georgetown College to its pupils, the only corporate powers which can properly be exercised by Georgetown College are to be found within the limits of the Act of Congress of June 10, 1844, incorporating that institution. The act of Congress provided that this institution should

have the right to instruct young men in the liberal arts and sciences; that they might take and dispose of property; that they might sue and be sued, grant diplomas, etc. In other words they were authorized to become an educational institution whereby young men should be instructed in the liberal arts and sciences, just as is the case with every other institution of a similar nature in the District of Columbia. The act of Congress says nothing about religious instruction or denomination of instruction. It simply happens that the people in control of this corporation created by Congress belong to a particular faith of religion or denomination, and whatever may have been the views of other courts or other individuals upon this subject, the question for us, we submit, is foreclosed by the decision of this Court in the case of Bradfield v. Roberts, 175 U. S., 296. In that case it was plain that the institution very well known in Washington as Providence Hospital was a sectarian institution.

The Court in that case said:

> "Assuming that the hospital is a private eleemosynary corporation, the fact that its members, according to the belief of the complainant, are members of a monastic order or sisterhood of the Roman Catholic Church, and the further fact that the hospital is conducted under the auspices of such church, are wholly immaterial as is also the allegation regarding title to its property. The statute provides as to its property and makes no provision for its being held by any one other than itself. The facts above stated do not in the least change the legal

character of the hospital or make a religious corporation out of a purely secular one, as constituted by the law of its being. Whether the individuals who compose the corporation under its charter happen to be all Roman Catholics, or all Methodists, or Presbyterians, or Unitarians, or members of any other religious denomination, or of no organization at all, is not of the slightest consequence with reference to the law of its incorporation, nor can the individual belief upon religious matters of the various incorporators be inquired into. Nor is it material that the hospital may be conducted under the auspices of a Roman Catholic Church. To be conducted under the auspices is to be conducted under the influence or patronage of that church. The meaning of the allegation is that the church exercises great and perhaps controlling influence over the management of the hospital. It must, however, be managed pursuant to the law of its being. * * * It is simply the case of a secular corporation being managed by people who hold to the doctrine of the Roman Catholic Church, but who, nevertheless, are managing the corporation accord- to the law under which it exists. * * * All that can be said of that corporation itself is that it has been incorporated by an act of Congress, and for its legal powers and duties that act must be exclusively referred to."

In the case at bar, we repeat, all that can be said is that Georgetown College is a corporation created by an act of Congress, its duties and its powers and franchises must be found within the four corners of that act. If it has been exceeding its powers under the act of Congress,

Congress or the courts have the right to correct that abuse of power, and Congress has expressly reserved to itself the right to alter, amend or repeal this charter. It is not for the complainant to complain of it The act of Congress does not prohibit the institution from giving religious instruction to its students. It does not prohibit the institution from attempting to instill good principles into its students, or from doing what seems to be complained about in the opposing brief, that is to say, to saving men's souls. Chief Justice Alvey was of the opinion that the decision of the Supreme Court of the United States in the case of Bradfield *v.* Roberts, was conclusive of this question, and no showing, it seems to us, has been made to make the present case distinguishable from the Bradfield case. In this connection it may be said that the same argument will apply to the devise to St. Vincent's Asylum and St. Joseph's Asylum. The bill alleges, on page 11 of the record, that these institutions were sectarian. This allegation is not proof. The charters of the two institutions are found on pages 40, 41 and 42 of the record. These institutions were both created by act of Congress.

Section 5 of the act of Congress of February, 25, 1831, incorporating St. Vincent's Orphan Asylum, provides that this institution might receive destitute children, male or female, and that the corporation should have power to bind any child under its care for the purpose of acquiring a knowledge of some useful trade, occupation, or profession, and that it might establish a school for children who are unable to pay for their education. In other

words, Congress authorized the establishment of an asylum for the care and maintenance and education of destitute children. To call such an institution a religious or sectarian institution is to our minds the statement of a monstrous proposition. There is absolutely no word of proof in the record to sustain such a charge. In like manner the charter of St. Joseph's Male Orphan Asylum provides that certain gentlemen should be incorporated for the purpose of charity and education. To say that such an institution, without a word of proof upon the subject, is a sectarian institution, is equally as monstrous. We submit that Georgetown College is an educational institution, and not a sectarian or religious institution, and that, therefore, the provisions of the Maryland Bill of Rights, as modified by the act of Congress, have no application to this case.

(2)

It is next contended that, assuming that Georgetown College is not a religious sect, order, or denomination, still the bequests are void by reason of a misnomer in the will. It would seem a complete answer to the claim to quote Section 4 of the act of June 10, 1844, which provides that no misnomer of the said corporation shall defeat or annul any donation, gift, grant, devise, or bequest to or from the said corporation; but if that were not sufficient, it appears from this record that Dr. Ethelbert Carroll Morgan was a member of the faculty of the medical department of Georgetown University. He was not a lawyer, and perhaps not sufficiently familiar with the

necessity of mentioning corporations by their correct corporate title. It does not appear that this instrument was prepared by a lawyer. On the contrary, it would seem to be manifest, from a mere reading of it, that it was prepared by a layman, and perhaps by the testator himself. It does appear that the language of the will from beginning to end is not precise or technical, and indeed, not accurate from the standpoint of a lawyer, but the only question in this connection for this Court to determine is, did he sufficiently identify the object of his bounty? When he said the University of Georgetown did he intend the object of his bounty to be the institution, the technical corporate title of which was "The President and Directors of Georgetown College?" It seems to us that the mere statement of the proposition is its own answer, but we are not left to inferences on that point. The answers which have force and effect of proof state explicitly that the corporation is popularly known in the City of Washington and generally throughout the United States as Georgetown University, or the University of Georgetown, or Georgetown College, and that it was the institution legally known as the President and Directors of Georgetown College, and no other, that was named as beneficiary under the Morgan will. The President of the University, in his testimony, beginning on page 69 of the record, says that the institution is known as Georgetown University, or the University of Georgetown, or Georgetown College, or simply as Georgetown, just as the institution known as Harvard or Pennsylvania would be referred to. Can it be seriously contended that

a devise or bequest to Yale University, an institution located at New Haven, in the State of Connecticut, would fail because the corporate title of the institution was the Corporation of Yale University? We submit that there is no force or merit in the contention and that the particular bequests, under discussion, to Georgetown University are not void by reason of the alleged misnomer. The authorities upon this subject are all collected, and are to be found in Judge Hagner's opinion, at pages 98, 99, and 100 of the record. The true rule undoubtedly is as stated in 1 Redfield on Wills, chapter 10, section 41, as follows:

> "It is never required that all particulars of name or description of person or thing should be precisely accurate in order to the validity of the provisions of a will. It is always sufficient that the courts, after learning the surrounding facts and circumstances, should be able with reasonable certainty to declare the intent of the testator."

Can this Court have any possible doubt after being informed that Dr. Morgan was a resident of the District of Columbia at the time of the making of his will, that he was a professor in the medical department of Georgetown University; that there is no other institution in this part of the country, or any part, that is known as Georgetown University? Can this Court have any possible doubt that Dr. Carroll Morgan intended to benefit the institution on Georgetown Heights, and no other? We submit that there can be but one answer to that question.

(3)

The bequests to the two asylums have been sufficiently considered in discussion of the first two points which we have argued, and it is believed that no further argument need be made as to the validity of this alternate bequest. The appellee in this case concedes, and it was conceded in both Courts below, that the bequest of $5,000 for the purchase and erection of a chime of bells, and either a side altar or memorial window, etc., for some Catholic church in the District of Columbia, is void, for several reasons, but we do claim that the alternate bequests over to the two asylums are perfectly good and should be sustained.

(4)

Is there any power in Georgetown University to prosecute a study of the colonial history of Maryland and the District of Columbia, and to obtain and to preserve archives and papers relating thereto, and to see to the application of the same? The Supreme Court of the District of Columbia held that this testamentary disposition was void, for the reason that Georgetown College had no chartered power which authorized it to make any research into the colonial history of Maryland or elsewhere. The court below uses the very singular argument that it does not appear that any student connected with the College would ever derive the slightest benefit from any result that might arise from the prosecution of the researches so vaguely referred to. Upon the same theory and by the same argument it might be held that the College had no right to purchase books upon any his-

torical subjects, for the reason that it would not appear that any of its students might derive any benefit from such purchase. By the terms of the law of its creation, Georgetown College was founded for the purpose of instruction of youth in the liberal arts and sciences. How can youth be instructed in the liberal arts and sciences unless there be persons competent to instruct them, and how can those persons make themselves competent to instruct youth in the liberal arts and sciences unless they equip themselves by proper study and research? The training of the teacher is just as important, and perhaps more important, than the training of the student. The Supreme Court in its opinion referred to the case of Jones v. Habersham, reported in 107 U. S., at page 189, where the Court said:

> "There is some ground for holding that the objects of a historical society would be promoted by administering a devise and bequest to maintain for the public instruction and benefit a house containing a collection of books, documents and works of art, with other such books and works to be selected by the officers of the society and purchased out of the surplus income, and that the purposes of the trust are, in the words of Mr. Justice Story, germane to the objects of the incorporation, and relate to matters which will promote and aid and perfect these objects."

The Supreme Court of the District of Columbia dismissed this branch of the case very summarily, and cited no authority to sustain the proposition that an institu-

tion like Georgetown College or any other institution, devoted to the instruction of youth, can not equip itself by making researches into the history of the very place where it is located, and by equipping its teachers for the purpose of enabling them more properly to perform the duties imposed upon the corporation by its charter. It is difficult to see how the nature of the research or the character of the archives could be more accurately or more definitely stated. The testator evidently intended that the institution should inquire into the colonial history of Maryland and the District of Columbia, which was at one time a part of the State of Maryland. How could he designate or define more accurately the nature of the research? The Court of Appeals reversed the Supreme Court of the District of Columbia upon this proposition and in this connection Chief Justice Alvey uses the following language:

> "The cultivation of historical research would seem to be a part of liberal education, such as should be encouraged by a college intended to confer degrees upon students in acquiring a liberal education in the arts and sciences. We have many learned discourses upon the philosophy of history and the term *science* is of a very large meaning in an educational point of view. Acknowledged truths and laws, in any department of mind or matter, digested and arranged into a system; a profound or complete knowledge of all acknowledged truths relating to any subject-matter. This is the definition of science, and it would seem to be

> comprehensive enough to embrace an inquiry into a matter of history, as a means of arriving at and establishing the truths of history, truth being the foundation of science. But even if it be thought that research in matters of history be not within the matter of the charter of the College, still, it is within the purview of the act, and germane to the objects and purposes of the incorporation."

We submit that the construction of the Court of Appeals placed upon this legacy of $10,000 is the proper one, and that its decision in that regard should be affirmed.

(5)

Are the two bequests, one of $3,000 and one of $5,000, for the purpose of founding scholarships, the first in the medical department of Georgetown University, and the second for the foundation of a scholarship in the classical department of Georgetown University, void?

The first objection raised to the bequest of $3,000 is on account of the uncertain amount directed to be expended. The language of the will is a sufficient sum not to exceed $3,000 shall be applied, etc. The direction is that a sufficient sum shall be expended. If the entire fund of $3,000 is necessary for the purpose then the entire sum will be expended. If a less amount is required for the purpose of establishing the scholarship, the difference between the amount of $3,000 and the amount actually necessary or actually expended would fall into

the residuum of the estate. It is stated by Mr. Justice Hagner in his opinion, that the trustees were directed to pay and see to the application of an indefinite sum, to be withdrawn from the residue of the estate to furnish an income for a scholarship in the study of medicine. We submit that this is not the proper construction of the language of the will. The testator says that the amount to be expended shall be a sufficient sum, and the law regards that as certain which can be made certain. It is true that scholarship is to be established in some university, preferably Georgetown University.

We contend further that the legacy of $5,000 for the purpose of forming the E. Carroll Morgan scholarship is a valid bequest. The amount is specifically named, the purpose is named with a sufficient degree of certainty, that is to say, the trustees are directed to select on proper advice, the establishment of a scientific department, the foundation of a scholarship in the classical department of the University of Georgetown. The beneficiary is clearly defined and named, and the trustees are given the discretion to do one of two things in the use of this fund. It is difficult to see upon what theory this legacy should not be sustained. It is true that there has been no appeal to this Court of the defendants, the individual members of the board of directors of Georgetown College, or by Michael J. Colbert, one of the substituted trustees. The only appellants in this Court are Eleanora D. Speer and James Mosher, one of the substituted trustees and Anna M. Mosher, but if the

decree of the Court of Appeals of the District of Columbia in this respect is properly before this Court for review, we submit that this legacy of $5,000 should be sustained. In all other respects it is submitted that the decree of the Court of Appeals of the District of Columbia is correct and should be affirmed.

GEORGE E. HAMILTON,
M. J. COLBERT.
*For Appellee.*